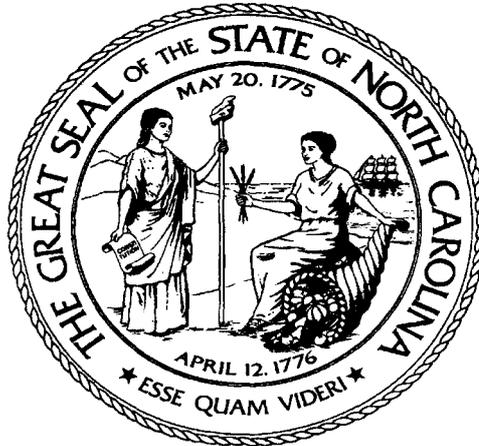


# NORTH CAROLINA GENERAL ASSEMBLY



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## NORTH CAROLINA ZOOLOGICAL PARK FUNDING AND ORGANIZATION STUDY COMMITTEE

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REPORT TO THE  
2009 SESSION  
of the  
GENERAL ASSEMBLY

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# TRANSMITTAL LETTER

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The CoChairs of the North Carolina Zoological Park Funding and Organization Study Committee, respectfully submit the following report.

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Representative Harold J. Brubaker  
Co-Chair

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Senator Pete Brunstetter  
Co-Chair

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Representative Edith D. Warren,  
Co-Chair

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# COMMITTEE PROCEEDINGS

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## Introduction

The North Carolina Zoological Park Funding and Organization Study Committee was established in March 2008 by the President Pro Tempore of the North Carolina Senate, and the Speaker of the North Carolina House of Representatives pursuant to G.S. 120-19.6(a) and Rule 31 of the Rules of the Senate and Rule 26(a) of the Rules of the House of Representatives of the 2007 General Assembly. Senator Pete Brunstetter, Representative Edith D. Warren, and Representative Harold J. Brubaker chaired the 22 member Committee. Membership consisted of legislators, the Director of the Park, members of the NC Zoological Society, the Secretary of the Department of Environment and Natural Resources, the Secretary of Commerce, and private citizens with an interest and/or expertise in the issues confronting the Zoological Park. The Committee was charged with reviewing the Zoo's funding needs, including current and expected capital and operational needs and sources of revenue and the Zoo's current organizational structure. The Committee was also tasked with identifying additional funding mechanisms for the Zoo, including the issuance of tax exempt bonds, and determining whether an alternative governance structure, such as a State Authority or non profit corporation, would allow the Zoo to execute its mission more effectively. A copy of the authorization for the North Carolina Zoological Park Funding and Organization Study may be found in Appendix A of this Report.

The North Carolina Zoological Park is located on 1,371 acres in Randolph County, North Carolina, just outside of the City of Asheboro. The Park is one of the largest natural habitat zoos in the country and is home to over 1,100 animals representing 250 different species. The Zoo is also unique as one of only two State owned zoo's in the United States, the other being the Minnesota Zoological Garden in Apple Valley, Minnesota. The Zoo's exhibits occupy approximately 500 acres of the tract. Major exhibits include animals from the continents of Africa and North America, and the R.J. Reynolds Forest Aviary. In addition to its animal exhibits, the Zoo is also known for its extensive botanical collection. For the past several years, attendance at the Zoo has averaged over 700,000 visitors per year.

Over the years, the Zoo has had to weather the vicissitudes of State finances and politics in obtaining funding to operate and maintain the Park. While operational needs have generally been met, the Zoo has not been able to keep up with its overall repair and renovation needs. The backlog is estimated by the Zoo staff to approach \$40 million dollars. Further, long range planning for additional exhibits at the Zoo is negatively impacted by the lack of a dependable source of capital financing.

## Committee Meetings

The North Carolina Zoological Park Funding and Organizational Study Committee met on November 6, November 18, and December, 9 of 2008. The initial meeting was held at the Park in Asheboro, North Carolina and began with a tour of the Zoo. The Committee went behind (and below) the exhibition areas to view the animal handling areas including the

holding areas for the polar bear exhibit, the primate holding areas under the African Pavilion, the new elephant barn, and the R. J. Reynolds Forest Aviary. During the tour, Dr. Jones, Director of the Zoo, and members of his staff detailed their concerns regarding suboptimal conditions for both employees and animals in the older exhibits and animal holding areas. While the Zoo fully meets the accreditation standards of the American Zoo and Aquarium Association, continued research on various species has suggested means of improving the habitats of some of the animals in the Park's collection. For some species, notably polar bears, facilities meeting these new protocols will be a necessary precondition to obtaining new animals for the Park. In addition to upgrades to the polar bear exhibit, there are substantial structural and electrical issues in the Zoo's African Pavilion, a 53,500 square foot facility constructed in 1984. Engineering studies undertaken at the request of the Zoo have concluded that replacement of the facility would be the most cost effective option.

On completion of the tour, the Committee regrouped at the Steadman Education building where Dr. Jones gave an extensive presentation detailing the history, governance, and funding of the Zoological Park.

According to Dr. Jones, work on the establishment of a State zoo began with a feasibility study in 1967, paid for by the Raleigh Jaycees who raised \$18,000 hosting a professional football game. The study resulted in the formation of a Zoo Authority, which was charged with acquiring a site, constructing, operating and maintaining a zoological garden. G.S. 143-175 (repealed S. L. 1973-1262). In 1973, the NC Zoo became a division of the North Carolina Department of Environment and Natural Resources. The Zoo Authority was replaced with the North Carolina Zoological Park Council, which serves as an advisory board to the Secretary of the Department of Environment and Natural Resources. G.S. 143B-335.

The Park is assisted in its mission by the North Carolina Zoological Society. Established in 1968, the Zoo Society is a private, non-profit 501 (c) (3) organization that provides funding and other support to the Zoo. The Society raises funds through its membership programs, annual capital and planned giving campaigns, gift shop sales and other programs. Funding provided by the Society has covered all the costs of the animals at the Zoo, plants in exhibits, the expansion of the elephant and rhino exhibits and new elephant barn, and other capital projects. The Zoo Society's work with the Park is conducted pursuant to a memorandum of understanding entered into by the Department of Environment and Natural Resources and the Society in August of 1993.

Operating costs for the Zoo currently run approximately \$18 million dollars per year. The majority this money (60%) comes from State appropriations. The balance, approximately \$6 million dollars, is derived from revenues (gate receipts, restaurants, and retail) and contributions from the Zoo Society. The Zoo is currently authorized to retain unbudgeted receipts at the end of each fiscal year in a Special Zoo Fund. The Special Zoo Fund may be used for maintenance, repairs and renovations, support facilities, equipment replacement and for marketing the Park. G.S. 143-336.1.

According to Dr. Jones, most of the Park's operational needs have received adequate funding. Over the past 15 years, however, and excepting the past 3 years, the Park has not received any capital for development. Funding for repairs and renovations has fluctuated in accord with the State's finances. From 1999 through 2003, there were no monies appropriated for Zoo repairs and renovations. The result is that there is now a \$40 million dollar backlog of repair and renovation needs

Dr. Jones also addressed the Zoo's long term capital plan. The Park has the potential to attract considerably more visitors by expanding the Zoo into a two day or multi day destination. To accomplish this, the Zoo proposes to add a third continent, Asia, to its exhibits. In addition, a complimentary attraction, together with conference and hotel facilities, could be constructed on the 270 acre tract owned by the Zoo Society located adjacent to the best potential site for the Asian exhibit. The expectation is that the additional offerings and services could boost attendance rates at the Zoo to well over 1 million per year. To address this long term plan, however, the Zoo needs to have a predictable source of capital funding which would allow it to plan confidently through a 15 year timeline and to attract private donations and commercial partnerships. Dr. Jones also noted that the Zoo needs additional flexibility in purchasing and contract negotiation to secure revenue generating contracts and the ability to enter into partnerships with private enterprises to enhance the marketing of the Zoo.

In between the first and second meetings of the Committee, a workgroup consisting of staff from the Committee, the Zoo, the Zoo Society, and the Secretary's Office at the Department of Environment and Natural Resources held a series of meetings and conference calls to review the challenges faced by the Zoo and develop a proposal for the Committee addressing these issues. Members of the workgroup were able to reach a consensus on a series of proposals and the results of the workgroup's efforts were presented to the November 21, 2008 Committee meeting in Raleigh.

At the second meeting, Dr. Jones revisited many of the issues raised in the first committee meeting. He emphasized the need for a reliable source of capital funding to allow the Zoo to proceed with its 15 year capital plan. He also reaffirmed the Zoo's need for greater flexibility in the negotiation of revenue generating contracts and in partnering with private enterprises. Dr. Jones also provided the Committee with a comparison chart on the governance at other, similarly sized zoos across the country. After Dr. Jones finished his presentation, Jim Klingler, Fiscal Research Division, gave a power point presentation that summarized the recommendations of the workgroup. He reviewed the various issues faced by the Zoo regarding governance and funding, discussed the options considered by the workgroup, and the conclusions and recommendations reached. A copy of the power point presentation on the consensus of the workgroup may be found in Appendix D of this Report.

The Committee's final meeting was held in Raleigh on December 9, 2008. The Committee reviewed and approved the draft report and proposed legislation. See, Appendix B and C of this Report. Before voting to approve the proposed legislation, however, the Committee voted to amend the bill to delete language that would have, effective July, 2010,

phased in a shift in the use of Zoo receipts from operations to capital improvements. Allowing receipts to be used for capital improvements will require additional appropriations for operations. Given the State's current fiscal situation, the Committee decided to remove that provision from the proposed legislation. The use of receipts as a funding source for capital projects, however, remains a Committee recommendation for implementation when the financial picture improves.

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## **FINDINGS AND RECOMMENDATIONS**

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**FINDING 1: THE NORTH CAROLINA ZOOLOGICAL PARK SHOULD REMAIN A DIVISION WITHIN THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES.**

While the North Carolina Zoological Park is a State agency, it was designed to operate as an attraction, with the revenues generated from gate receipts and other entrepreneurial activities to be used to offset at least part of the funding required for operations and maintenance. Revenue generating activities and the development of public/private initiatives, however, have been hampered by the fact that, as a State agency, the Zoo must follow the standard State purchasing and contract rules. In addition, the Zoo is also subject, in part, to the limitations of the Umstead Act, Article 11 of Chapter 66 of the General Statutes, which prohibits State agencies from competing with private enterprise. Given these constraints and the fact that the long term plans for the Zoo include expansion into a multi day destination, the Committee set out to determine the best governance structure for the Zoo to meet its mission. Three possible approaches to governance of the Park were considered; a private non-profit entity, a State Public Authority, and retaining the status quo with greater latitude in purchasing and contract and a broader exemption from the Umstead Act.

Based upon the information presented, the Committee finds that Zoo revenues are inadequate at this time to justify a spin off as a private non profit entity. Sixty percent of the Park's operating budget is provided through State appropriations. In addition, the Zoo benefits from access to the administrative support provided by the Department of Environment and Natural Resources and access to State debt mechanisms for current and future capital needs. For similar reasons, it appears that the creation of a State Zoo Authority is not warranted at this time.

The Committee recommends that, at least for the near term, the Zoo continue to operate as a division within the Department. The Committee recommends that Department, however, should be provided with additional contracting powers on behalf of the Zoo to allow the Zoo to take full advantage of revenue generating opportunities and public/private partnership agreements. In addition, the Department should review its existing procedures and delegate all appropriate contracting powers for goods and services to the Park. See; Parts I and III of the draft legislation contained in Appendix C of this Report.

**FINDING 2: THE NORTH CAROLINA ZOOLOGICAL PARK SHOULD BE EXEMPT FROM THE PROVISIONS OF THE UMSTEAD ACT, ARTICLE 11 OF CHAPTER 66 OF THE GENERAL STATUTES.**

As noted in Finding 1 above, the Zoo, as an attraction, is engaged in many revenue generating activities including food service, retail, and other private enterprise activities. In addition, the long term plans for the Zoo contemplate expanded opportunities for public private partnerships, including conference centers, hotels, and complementary attractions. The Committee finds that, given its mission, the Zoo should not be subject to

the restrictions of the Umstead Act and recommends that G.S. 66-58 be amended to exempt the Zoo from the provisions of the Act. See Part II of the draft legislation contained in Appendix C of this Report.

**FINDING 3. THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES SHOULD BE GIVEN EXPANDED PURCHASE AND CONTRACT AUTHORITY ON BEHALF OF THE NORTH CAROLINA ZOOLOGICAL PARK TO ADDRESS PUBLIC PRIVATE PARTNERSHIP OPPORTUNITIES, REVENUE GENERATING CONTRACTS, AND OTHER NON STANDARD PROCUREMENT CONTRACTS.**

The Committee finds that the nature of the State's purchase and contract rules are not well suited for the revenue generating contracts and development of public/private partnerships that are vital to the operation of the Zoo. Alternative procurement procedures have been made available for complex and innovative contracts such as those for information technology. Under State law, information technology contracts may be let utilizing "Best Value" procurement and "Government-Vendor Partnerships". G.S. 143-129.8, G.S. 143-135.9. Best Value procurement allows the selection of a contractor based on a determination of which proposal offers the best trade off between price and performance. "Government-Vendor Partnerships are mutually beneficial contractual relationships between State government and a contractor where both parties share the risk and reward and value is added. In many instances, the Zoo seeks to develop such partnerships in order to maximize the revenue streams for both the private contractor and the Park. In such cases, the award of a contract to the low bidder can be counterproductive to the revenue generating goal.

The Committee recommends that the Department of Environment and Natural Resources be given additional authority on behalf of the Zoo to enter into contracts using Best Value Procurement and Government Vendor Partnerships. The Committee also recommends that, subject to agreement by Department, contractors awarded a contract that results in increased revenue or decreased expenditures for the Zoo would be allowed to advertise, announce, or publicize award of the contract. Finally, the Department should review its procurement policies and procedures and delegate all appropriate contracting powers for goods and services to the Park. See Parts I and III of the draft legislation contained in Appendix C of this Report.

**FINDING 4. THE PURPOSES FOR WHICH THE SPECIAL ZOO FUND MAY BE USED SHOULD BE MODIFIED TO INCLUDE THE CONSTRUCTION OF FACILITIES AT THE NORTH CAROLINA ZOOLOGICAL PARK AND DEBT SERVICE AND LEASE PAYMENTS RELATED TO THE FINANCING OF CAPITAL IMPROVEMENTS AT THE PARK.**

The North Carolina Zoological Park needs a more dependable and certain source of funding for capital projects if it is to reduce the backlog of necessary repairs and renovations at the Park. A reliable source of funding is also a prerequisite to undertaking the 15 year plan to add the Asian continent to its exhibits and make the Zoo a multi-day attraction. Zoo receipts, together with appropriations, are currently designated for

operational costs. The Special Zoo Fund, G.S. 143B-336.1, which consists of unbudgeted receipts, limits the use of the Fund for capital improvements and does not provide authority for the Fund to be used to service debt financing. This leaves State appropriations and Zoo Society contributions as the primary sources of funding for capital needs.

In considering alternatives for a stable funding source for the Zoo's capital needs, the Committee looked at the North Carolina Aquarium Fund. G.S. 1443B-289.44. The Aquarium Fund consists of all entrance fee receipts at the aquariums. The statute outlines a number of purposes for which monies in the Fund may be used, including debt service and lease payments related to financing expansions of the aquariums.

The Committee finds that the Aquarium Fund provides a good model for redirecting Zoo revenues toward capital projects. Amending the existing Special Zoo Fund to allow receipts to be used for capital needs, including debt service and lease payments, would provide the Zoo a more stable flow of capital and allow for the orderly planning and execution of capital projects. Zoo receipts are currently about \$6 million dollars per year. Assuming that 70% of these revenues were available to service debt financing, the Zoo could expect to be able finance \$30 to \$40 million dollars in capital improvements through the Special Zoo Fund.

The Committee also finds, however, that the State's current financial picture militates against the immediate implementation of this recommendation.

In light of the foregoing, the Committee recommends amending the Special Zoo Fund to expand the purposes for which it may be used to include debt service and lease payments related to the financing of capital improvements at the Zoo when funding is available to cover the Zoo's operating costs.

**FINDING 5. THE COMMITTEE FINDS THAT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES SHOULD BE DIRECTED TO ASSIST THE ZOO IN NEGOTIATIONS WITH THE OFFICE OF INFORMATION TECHNOLOGY SERVICES REGARDING THE IMPLEMENTATION OF ARTICLE 3D OF CHAPTER 147 OF THE GENERAL STATUTES AND TO REVISIT THE 15 YEAR OLD MEMORANDUM OF UNDERSTANDING WITH THE NC ZOO SOCIETY.**

The Committee finds that the Zoo's information technology needs might not be best served by participating in the programs mandated by the Office of State Information Technology Services. The Committee therefore recommends that the Department of Environment and Natural Resources work with the Zoo and Information Technology Services regarding the computing needs of the Zoo. See, Part IV of the draft legislation contained in Appendix C of this Report.

The Committee further finds that the memorandum of understanding between the North Carolina Zoological Society and the Department of Environment and Natural Resources is now 15 years old. The Committee recommends that the Department and the

Zoo Society review the document and revise or replace it as appropriate. See, Part III of the draft legislation contained in Appendix C of this Report.

The Committee also recommends that the Department of Environment and Natural Resources report to the North Carolina Zoological Park Funding and Organization Study Committee and to the Fiscal Research Division of the Legislative Services Office regarding progress and implementation of the Committee's recommendations. See, Part IV of the draft legislation contained in Appendix C of this Report.

**FINDING 6. THE COMMITTEE FINDS THAT THE STUDY SHOULD BE EXTENDED UNTIL MAY 2010 TO ALLOW FOR OVERSIGHT OF THE IMPLEMENTATION OF THE RECOMMENDATIONS OF THIS REPORT.**

The findings and recommendations of the Committee are set forth as the Committee's best judgment of those actions that will address the immediate challenges before the North Carolina Zoological Park. Depending on the progress made by the Zoo and the Department of Environment and Natural Resources, additional steps may need to be taken, including further consideration of alternative governance structures, particularly a State Zoo Authority. The Committee therefore recommends that the Study Committee be legislatively constituted and tasked with reporting its findings and recommendations to the 2010 Session of the 2009 General Assembly. See, Part V of the draft legislation contained in Appendix C of this Report.

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## APPENDICES

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## APPENDIX A

**Marc Basnight**  
**President Pro**  
**Tempore,**  
**North Carolina Senate**



**Joe Hackney**  
**Speaker,**  
**North Carolina**  
**House of**  
**Representatives**

Raleigh, North Carolina 27601-1096

**North Carolina Zoological Park Funding and Organization Study  
 Committee**

**Section 1.** The **North Carolina Zoological Park Funding and Organization Study Committee** (hereinafter "Committee") is established by the President Pro Tempore of the Senate and the Speaker of the House of Representatives pursuant to G.S. 120-19.6(a1), Rule 31 of the Rules of the Senate of the 2007 General Assembly, and Rule 26(a) of the Rules of the House of Representatives of the 2007 General Assembly.

**Section 2.** The Committee consists of the 22 members listed below. The President Pro Tempore of the Senate shall appoint 11 members of the Committee, 5 of whom shall be members of the Senate, and the Speaker of the House of Representatives shall appoint 11 members of the Committee, 5 of whom shall be members of the House. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint a co-chair from among their respective appointees. The Committee and the terms of the members shall expire when the Committee submits a final report to the General Assembly. Members serve at the pleasure of the appointing officer.

<b>President Pro Tempore Appointments</b>	<b>Speaker of the House Appointments</b>
Senator Pete Brunstetter, Co-Chair	Representative Harold J. Brubaker, Co-Chair
Senator Katie Dorsett	Representative Edith D. Warren, Co-Chair
Senator Edd Jones	Representative Pricey Harrison
Senator Jerry Tillman	Representative Pat B. Hurley
Senator David Weinstein	Representative Cullie M. Tarleton
Secretary Bill Ross, Wake County	Dr. David Jones, DVM, Randolph County
Secretary Jim Fain, Wake County	Mr. David K. Robb, Mecklenburg County
Ms. Lynn Minges, Wake County	Ms. Mary F. Flanagan, Orange County
Mr. Russ Williams, Randolph County	Mr. Scott E. Reed, Forsyth County
Mr. Walker B. Moffitt, Randolph County	Ms. Melanie Wilson, Wake County
Mr. Cooper Brantley, Guilford County	Dr. David E. Harling, DVM, Guilford County

### **Public Members**

The President Pro Tempore of the Senate appoints the following 6 public members of the Committee:

- The Secretary of Environment and Natural Resources, or the Secretary's recommended designee.
- The Secretary of Commerce, or the Secretary's recommended designee.
- The Executive Director of the Division of Tourism, Film and Sports Development of the Department of Commerce, or the Executive Director's recommended designee.
- One current or former member of the board of directors of the North Carolina Zoological Society, Inc., upon the recommendation of the chair of the board of the North Carolina Zoological Society, Inc.
- Two representatives from the public at large.

The Speaker of the House of Representatives appoints the following 6 public members of the Committee:

- The Director of the North Carolina Zoological Park, or the Director's recommended designee.
- The chair of the board of directors of the North Carolina Zoological Society, Inc., or the chair's recommended designee.
- One current or former member of the board of directors of the North Carolina Zoological Society, Inc., upon the recommendation of the chair of the board of the North Carolina Zoological Society, Inc.
- The Council Chair of the North Carolina Zoological Park Council.
- Two representatives from the public at large.

**Section 3.** The Committee shall study and report on the following:

- (1) Funding issues associated with the North Carolina Zoological Park, including current and expected capital and operational needs, current sources of revenue, and potential funding mechanisms, including the issuance of tax-exempt bonds.
- (2) The current organizational structure of the North Carolina Zoological Park, and other potential organizational structures, including reorganization as an authority, as a private nonprofit corporation, or other entity to determine which organizational structure would most effectively achieve the mission of the North Carolina Zoological Park.
- (3) Any other issues the Committee deems relevant to the North Carolina Zoological Park.

**Section 4.** The Committee shall meet upon the call of its co-chairs. A quorum of the Committee is a majority of its members. No action may be taken except by a majority vote at a meeting at which a quorum is present.

**Section 5.** The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and Article 5A of Chapter 120 of the

General Statutes. The Committee may contract for professional, clerical, or consultant services, as provided by G.S. 120-32.02.

**Section 6.** Members of the Committee shall receive per diem, subsistence, and travel allowance as provided in G.S. 120-3.1, 138-5 and 138-6, as appropriate.

**Section 7.** The expenses of the Committee shall be considered expenses incurred for the joint operation of the General Assembly. An initial allocation of \$35,000 shall be provided to the Committee from funds appropriated to the General Assembly.

**Section 8.** The Legislative Services Officer shall assign professional and clerical staff to assist the Committee in its work. The Director of Legislative Assistants of the House of Representatives and the Director of Legislative Assistants of the Senate shall assign clerical support staff to the Committee.

**Section 9.** The Committee may meet at various locations around the State in order to promote greater public participation in its deliberations. The Legislative Services Commission shall grant adequate meeting space to the Committee in the State Legislative Building or the Legislative Office Building.

**Section 10.** The Committee may submit an interim report on the results of its study, including any proposed legislation, to the members of the Senate and the House of Representatives, on or before May 1, 2008, by filing a copy of the report with the Office of the President Pro Tempore of the Senate, the Office of the Speaker of the House of Representatives, and the Legislative Library. The Committee shall submit a final report on the results of its study, including any proposed legislation, to the members of the Senate and the House of Representatives, on or before December 31, 2008, by filing a copy of the report with the Office of the President Pro Tempore of the Senate, the Office of the Speaker of the House of Representatives, and the Legislative Library. The Committee shall terminate on December 31, 2008, or upon the filing of its final report, whichever occurs first.

Effective this 3<sup>rd</sup> day of March, 2008.



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Marc Basnight  
President Pro Tempore of the Senate



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Joe Hackney  
Speaker of the House of Representatives

## APPENDIX B



# DRAFT: Zoo and Zoo Funds Modifications

## BILL ANALYSIS

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<b>Committee:</b>	The North Carolina Zoological Park Funding and Organization Study Committee	<b>Date:</b>	December 3, 2008
<b>Version:</b>	BILL DRAFT: 2009-MC-7	<b>Summary by:</b>	Jennifer McGinnis Dan Etefagh Committee Counsel

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**SUMMARY:** *The draft bill would: (i) modify the purchase and contract authority of the Department of Environment and Natural Resources (DENR) exercised on behalf of the Zoological Park (Zoo); (ii) expand the exemption the Zoo currently has under the Umstead Act; (iii) require DENR to work with the Zoo on outstanding procurement and contract issues, information technology issues, and any other administrative concerns of the Zoo and report its findings by January 15, 2010; (iv) require DENR to review the current Memorandum of Understanding (MOU) between DENR and the North Carolina Zoological Society (Society) and revise or replace the MOU as necessary; and; (v) establish the North Carolina Zoological Park Funding and Organization Study Committee.*

### BILL ANALYSIS:

#### Part I: Purchase and contract modifications

Part I of the bill would result in two legislative changes to purchasing and contracting for the Zoo. First, DENR, acting on behalf of the Zoo with regard to contracts with non-state entities that either generate revenue (carousel, strollers, etc.) or decrease expenditures for the State, would be authorized to use (i) Best Value procurement<sup>1</sup> and (ii) use of Government-Vendor Partnership.<sup>2</sup> Under current law, these procurement methods are currently only authorized for State acquisition of information technology pursuant to G.S. 143-135.9.

Second, subject to agreement by DENR, contractors awarded a contract that results in increased revenue or decreased expenditures for the Zoo would be allowed to advertise, announce, or publicize award of the contract. For example, a soft drink vendor that has a contract with the Zoo for the exclusive provision of soft drinks within the Zoo would be allowed to advertise that relationship with the Zoo on neck ringers, radio ad tags, etc. This is currently prohibited by State rule (01 NCAC 05B.1516).

#### Part II: Umstead Act exemption modification

The Zoo would be fully exempted from the restrictions of the Umstead Act. The Umstead Act (G.S. 66-58) generally prohibits the State from engaging in activities that compete with private enterprise, including leasing or subleasing of space to another for the purpose of operating or rendering any prohibited competitive activity. Under current law, one of the exceptions under the Umstead Act is for

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<sup>1</sup> Best Value procurement means the selection of a contractor based on a determination of which proposal offers the best trade off between price and performance, where quality is considered an integral performance factor. The intent of Best Value procurement is to enable contractors to offer and the agency to select the most appropriate solution to meet the business objectives defined in the solicitation.

<sup>2</sup> Government-Vendor Partnership means a mutually beneficial contractual relationship between State government and a contractor, wherein the two share risk and reward, and value is added to the procurement of needed goods or services.

the leasing 50 acres or less within the Zoo by DENR to the Society for the maintenance or operation of an exhibition center, theater, conference center, and associated restaurants and lodging facilities. The bill would replace this limited exemption with a full exemption for the Zoo.

Parts III and IV: Administrative improvements and reporting

The bill would require DENR to work with the Zoo to do the following: (i) improve purchase and contract processes, including increased delegation; (ii) negotiate with the Office of Information Technology Services on the Zoo's IT needs; and (iii) address any other administrative issues. DENR would also be required to review the current MOU between DENR and the Society and revise or replace the MOU as necessary. The current MOU was executed on August 23, 1993, and has not been revised or updated since.

DENR would report back to the Committee and the Fiscal Research Division of the General Assembly on these issues no later than January 15, 2010.

Part V. Establishment of Committee

The bill would establish, by legislative enactment, the North Carolina Zoological Park Funding and Organization Study Committee. The Committee as established under the bill would have the same powers and duties as that of the current Committee. The current Committee was established by the President Pro Tempore of the Senate and the Speaker of the House of Representatives pursuant to G.S. 120-19.6(a1), Rule 31 of the Rules of the Senate of the 2007 General Assembly, and Rule 26(a) of the Rules of the House of Representatives of the 2007 General Assembly. That authorization provides for termination of the Committee by December 31, 2008.

**EFFECTIVE DATE:**

The bill would become effective when it became law.

*2009-MC-7-SMMC*

## APPENDIX C

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

H/S

D

BILL DRAFT 2009-MC-7\* [v.12] (11/19)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
12/9/2008 11:57:33 AM

Short Title: Zoo and Zoo Funds Modifications. (Public)

Sponsors: Representatives E. Warren; Brubaker, Tarleton, Hurley, and  
Harrison./Senators Brunstetter, Dorsett, Jones, Tillman, and Weinstein.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE PURCHASING AND CONTRACTING AUTHORITY  
BY THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES  
ON BEHALF OF THE NORTH CAROLINA ZOOLOGICAL PARK; TO  
EXPAND THE UMSTEAD EXEMPTION FOR THE PARK; TO IMPROVE THE  
ADMINISTRATION OF PARK OPERATIONS; TO REQUIRE A REPORTING  
OF THE PROGRESS AND IMPLEMENTATION OF THE MANDATES OF THIS  
ACT; AND TO ESTABLISH THE NORTH CAROLINA ZOOLOGICAL PARK  
FUNDING AND ORGANIZATION STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

**PART I: PURCHASING AND CONTRACTING AUTHORITY ON BEHALF OF  
THE NORTH CAROLINA ZOOLOGICAL PARK**

**SECTION 1.1.** Article 8 of Chapter 143 of the General Statutes is amended  
by adding a new section to read:

**"§ 143-129.8A. Purchase of certain goods and services for the North Carolina  
Zoological Park.**

(a) Exemption. – The North Carolina Zoological Park is a State entity whose  
primary purpose is the attraction of, interaction with, and education of the public  
regarding issues of global conservation, ecological preservation, and scientific  
exploration, and that purpose presents unique challenges requiring greater flexibility  
and faster responsiveness in meeting the needs of and creating the attractions for the  
Park. Accordingly, the Department of Environment and Natural Resources may use the  
procedure set forth in this section, in addition to or instead of any other procedure

1 available under North Carolina law, to contract with a non-State entity on behalf of the  
2 Park for the acquisition of goods and services where (i) the contract directly results in  
3 the generation of revenue for the State of North Carolina or (ii) the use of the acquired  
4 goods and services by the Park results in increased revenue or decreased expenditures  
5 for the State of North Carolina.

6 (b) Limitation. – Contracts executed pursuant to the exemption of subsection (a)  
7 of this section may be entered into under a request for proposals procedure that satisfies  
8 the following minimum requirements:

9 (1) Notice of the request for proposals shall be given in accordance with  
10 G.S. 143-129(b).

11 (2) Contracts shall be awarded to the person or entity that submits the best  
12 overall proposal as determined by the awarding authority. Factors to be  
13 considered in awarding contracts shall be identified in the request for  
14 proposals.

15 (c) Procurement methods. – The Department may use procurement methods set  
16 forth in G.S. 143-135.9 in developing and evaluating requests for proposals under this  
17 section. The Department may negotiate with any proposer in order to obtain a final  
18 contract that best meets the needs of the awarding authority. Negotiations allowed under  
19 this section shall not alter the contract beyond the scope of the original request for  
20 proposals in a manner that: (i) deprives the proposers or potential proposers of a fair  
21 opportunity to compete for the contract; and (ii) would have resulted in the award of the  
22 contract to a different person or entity if the alterations had been included in the request  
23 for proposals.

24 (d) Promotional rights. – Subject to the approval of the Department, a non-State  
25 entity awarded a contract that results in increased revenue or decreased expenditures for  
26 the Park may advertise, announce, or otherwise publicize the provision of services  
27 pursuant to award of the contract."

28 **SECTION 1.2.** G.S. 143-135.9 reads as rewritten:

29 **"§ 143-135.9. ~~"Best Value" information technology procurements.~~Best Value**  
30 **procurements.**

31 (a) ~~For purposes of this section:~~Definitions. – The following definitions apply in  
32 this section:

33 (1) ~~"Best Value" procurement means the~~Best Value procurement. – The  
34 selection of a contractor based on a determination of which proposal  
35 offers the best trade-off between price and performance, where quality  
36 is considered an integral performance factor. The award decision is  
37 made based on multiple factors, including: total cost of ownership,  
38 meaning the cost of acquiring, operating, maintaining, and supporting  
39 a product or service over its projected lifetime; the evaluated technical  
40 merit of the vendor's proposal; the vendor's past performance; and the  
41 evaluated probability of performing the requirements stated in the  
42 solicitation on time, with high quality, and in a manner that

1 accomplishes the stated business objectives and maintains industry  
2 standards compliance.

3 (2) ~~"Government Vendor Partnership" means a Government-Vendor~~  
4 ~~partnership. – A mutually beneficial contractual relationship between~~  
5 ~~State government and a contractor, wherein the two share risk and~~  
6 ~~reward, and value is added to the procurement of complex~~  
7 ~~technology-needed goods or services.~~

8 (3) ~~"Information technology" includes electronic~~ Information technology.  
9 ~~– Electronic data processing and telecommunications goods and~~  
10 ~~services, microelectronics, software, information processing, office~~  
11 ~~systems, any services related to the foregoing, and consulting or other~~  
12 ~~services for design and/or redesign of business processes.~~

13 (4) ~~"Solution-Based Solicitation" means a Solution-Based solicitation. – A~~  
14 ~~solicitation in which the requirements are stated in terms of how the~~  
15 ~~product or service being purchased should accomplish the business~~  
16 ~~objectives, rather than in terms of the technical design of the product~~  
17 ~~or service.~~

18 (b) ~~Intent. – The intent of "Best Value" Information Technology~~ Best Value  
19 procurement is to enable contractors to offer and the agency to select the most  
20 appropriate solution to meet the business objectives defined in the solicitation and to  
21 keep all parties focused on the desired outcome of a procurement. ~~Business process~~  
22 ~~reengineering, system design, and technology implementation may be combined into a~~  
23 ~~single solicitation.~~

24 (c) Information Technology. – The acquisition of information technology by the  
25 State of North Carolina shall be conducted using the "Best Value" Best Value  
26 procurement method. For purposes of this section, ~~business process reengineering,~~  
27 ~~system design, and technology implementation may be combined into a single~~  
28 ~~solicitation.~~ For acquisitions which the procuring agency and the Division of Purchase  
29 and Contracts or the Office of Information Technology Services, as applicable, deem to  
30 be highly complex or determine that the optimal solution to the business problem at  
31 hand is not known, the use of Solution-Based Solicitation and Government-Vendor  
32 Partnership is authorized and encouraged. ~~Any county, city, town, or subdivision of the~~  
33 ~~State may acquire information technology pursuant to this section.~~

34 (d) ~~Any county, city, town or subdivision of the State may acquire information~~  
35 ~~technology pursuant to this section.~~

36 (e) North Carolina Zoological Park. – The acquisition of goods and services  
37 under a contract entered pursuant to the exemption of G.S. 143-129.8A(a) by the  
38 Department of Environment and Natural Resources on behalf of the North Carolina  
39 Zoological Park may be conducted using the Best Value procurement method. For  
40 acquisitions which the procuring agency deems to be highly complex, the use of  
41 Government-Vendor partnership is authorized."

1 **PART II: EXPANSION OF UMSTEAD ACT EXEMPTION FOR THE NORTH**  
2 **CAROLINA ZOOLOGICAL PARK**

3 **SECTION 2.1.** G.S. 66-58(b) is amended by adding a new subdivision to  
4 read:

5 "(b) The provisions of subsection (a) of this section shall not apply to:

6 ...

7 (26) The North Carolina Zoological Park."

8 **SECTION 2.2.** G.S. 66-58(c)(18) is repealed.  
9

10 **PART III: ADMINISTRATIVE IMPROVEMENTS TO THE NORTH**  
11 **CAROLINA ZOOLOGICAL PARK OPERATIONS**

12 **SECTION 3.1.** The Secretary of the Department of Environment and  
13 Natural Resources shall work with the North Carolina Zoological Park to do the  
14 following:

- 15 (1) Examine all purchasing and contracting policies and procedures. The  
16 Department shall identify opportunities for delegating purchasing and  
17 contracting responsibilities to the Park where appropriate. For  
18 purchases and contracts involving promotion and advertising, the  
19 Department shall consider increasing the amount over which the Park  
20 must solicit competitive bids or quotes to \$5,000.
- 21 (2) Continue negotiations with the Office of Information Technology  
22 Services regarding the implementation of Article 3D of Chapter 147 of  
23 the General Statutes.
- 24 (3) Identify and address any other administrative concerns of the Park.

25 **SECTION 3.2.** The Secretary of the Department of Environment and  
26 Natural Resources shall review the current Memorandum of Understanding between the  
27 Department and the North Carolina Zoological Society. The Secretary shall work with  
28 the Society to make appropriate revisions to or replace the Memorandum, as needed.  
29

30 **PART IV: REPORT**

31 **SECTION 4.** The Department of Environment and Natural Resources shall  
32 report to the North Carolina Zoological Park Funding and Organization Study  
33 Committee and to the Fiscal Research Division of the Legislative Services Office on the  
34 progress and implementation of Parts I and IV of this act no later than January 15, 2010.  
35

36 **PART V: ESTABLISHMENT OF COMMITTEE**

37 **SECTION 5.1.** Committee Established. – The North Carolina Zoological  
38 Park Funding and Organization Study Committee is hereby established.

39 **SECTION 5.2.** Membership. – The Committee shall consist of 22 members  
40 as follows:

- 41 (1) Five members of the Senate appointed by the President Pro Tempore  
42 of the Senate.

- 1 (2) Five members of the House appointed by the Speaker of the House of  
2 Representatives.
- 3 (3) The Secretary of Environment and Natural Resources, or the  
4 Secretary's designee.
- 5 (4) The Director of the Zoological Park, or the Director's designee.
- 6 (5) The Secretary of Commerce, or the Secretary's designee.
- 7 (6) The Executive Director of the Division of Tourism, Film and Sports  
8 Development of the Department of Commerce, or the Executive  
9 Director's designee.
- 10 (7) The Chair of the North Carolina Zoological Park Council, or the  
11 Chair's designee.
- 12 (8) The Chair of the board of directors of the North Carolina Zoological  
13 Society, Inc., or the Chair's designee.
- 14 (9) Two additional representatives of the Zoo Society Board, who may be  
15 comprised of current or former members, one appointed by the  
16 President Pro Tempore of the Senate upon recommendation of the  
17 Chair of the Zoo Society Board, one appointed by the Speaker of the  
18 House upon recommendation of the Chair of the Zoo Society Board.
- 19 (10) Two representatives from the public at large appointed by the  
20 President Pro Tempore of the Senate.
- 21 (11) Two representatives from the public at large appointed by the Speaker  
22 of the House.

23 **SECTION 5.3. Cochairs.** – The Committee shall have three cochairs, one  
24 designated by the President Pro Tempore of the Senate and two designated by the  
25 Speaker of the House of Representatives from among their respective appointees. The  
26 Committee shall meet upon the call of the cochairs.

27 **SECTION 5.4. Quorum.** – A quorum of the Committee shall consist of 10  
28 members.

29 **SECTION 5.5. Vacancies.** – Any vacancy on the Committee shall be filled  
30 by the original appointing authority.

31 **SECTION 5.6. Purpose and Duties.** – The Committee shall study (i) funding  
32 issues associated with the Zoological Park, including current and expected capital and  
33 operational needs, current sources of revenue, and potential funding mechanisms; and  
34 (ii) the current organizational structure of the Zoological Park, and other potential  
35 organizational structures, including, but not limited to, reorganization as an authority, as  
36 a private nonprofit corporation, or other entity to determine which organizational  
37 structure would most effectively achieve the mission of the Zoological Park.

38 **SECTION 5.7. Expenses of Members.** – Members of the Committee shall  
39 receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1,  
40 138-5, or 138-6, as appropriate.

1           **SECTION 5.8.** Staff. – Upon the prior approval of the Legislative Services  
2 Commission, the Legislative Services Officer shall assign professional staff to the  
3 Committee to aid in its work.

4           **SECTION 5.9.** Consultants. – The Committee may hire consultants to assist  
5 with the study as provided in G.S. 120-32.02(b).

6           **SECTION 5.10.** Meetings. – The Committee may meet in the Legislative  
7 Building or the Legislative Office Building upon the approval of the Legislative  
8 Services Commission.

9           **SECTION 5.11.** Report. – The Committee shall report its findings and  
10 recommendations to the 2010 Session of the 2009 General Assembly and the  
11 Environmental Review Commission on or before May 1, 2010, at which time the  
12 Committee shall terminate.

13           **SECTION 5.12.** Funding. – From funds appropriated to the General  
14 Assembly, the Legislative Services Commission shall allocate funds for the purpose of  
15 conducting the study provided for in this act.

16  
17 **PART VI: EFFECTIVE DATE**

18           **SECTION 6.** This act is effective when it becomes law.

## APPENDIX D

# North Carolina Zoological Park Consensus Proposal

Jim Klingler  
Senior Fiscal Analyst

N.C. Zoological Park  
Funding and Organization  
Study Committee

November 21, 2008



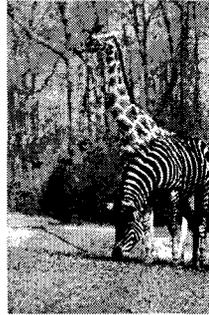
FISCAL RESEARCH DIVISION  
A Staff Agency of the North Carolina General Assembly

## Overview

- Workgroup Process and Participants
- Zoo Governance
- Increased Authority
- Zoo Funding and Capital Improvements
- Further Direction to DENR
- Future of the Zoo Study Committee
- Summary of Proposal

## Workgroup Process and Participants

- Series of meetings and conference calls
- Participants included:
  - NC Zoo
  - NC Zoo Society
  - DENR Secretary's Office
  - Committee Staff
- Discussed Zoo challenges and possible responses
- Drafted a proposal to the Committee



## Zoo Governance

- Workgroup considered three approaches to Governance:
  - Private Non-Profit
  - State Public Authority
  - Status Quo w/ direction to DENR
- Which is appropriate for the short-term?
- How about the long-term?

## Zoo Governance – Private Non-Profit

- The Zoo was established to be an enterprise
- The State could spin the Zoo off (MCNC; NC Biotech Center)

### Pros

- Responsive
- Outside State statute
- Incentivized

### Cons

- Sustaining State financial support
- Accessing administrative support
- Access to all forms of State debt

## Zoo Governance – Public Authority

- Semi-independent entity with governing board
- Housed within DENR

### Pros

- Responsive
- Powers Delegated
- State Financial Support
- Administrative support

### Cons

- Sustaining DENR Support
- Zoo Staff Capacity
- Potential overreaction to current needs

## Zoo Governance – Status Quo

- No immediate statutory change
- Direct DENR to pursue administrative solutions

### Pros

- Executive control of change
- Potential Delegation
- State Financial Support
- Administrative support

### Cons

- Current barriers may persist
- Inconsistency may remain
- Delaying the inevitable?

## Zoo Governance

- **Non-Profit Option – Eliminated** due to dependence of the Zoo on State funds
- **Public Authority Option – Tabled** as a possible long-term response
- **Status Quo with Direction to DENR** – The intermediate step to address short-term challenges.



## Increased Authority - Contracting

- Workgroup discussed new contracting powers for the Zoo
- Powers to address Public-Private Partnership opportunities, revenue-sharing agreements, and other non-standard procurement contracts
- Looked to other authorities in other agencies (ITS)

## Increased Authority - Contracting

The Workgroup proposes allowing two types of contracts:

### **Best Value**

Procurement based on the proposal that offers the best trade-off between price and performance

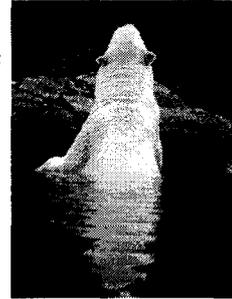
### **Government-Vendor Partnership**

mutually beneficial contract that shares risk, reward, and value

## Increased Authority - Contracting

The Workgroup proposal would:

- Provide DENR with the new contracting powers, on behalf of the Zoo
- Direct DENR to delegate all appropriate contracting powers for goods and services down to the Zoo



## Increased Authority – Private Activities

- As an attraction, the Zoo engages in many private-type activities
- The Workgroup envisions future opportunities for on-site private services and amenities
- The proposal includes expanding the Zoo's current exemption from Art. 11 of Chap. 66 (the Umstead Act)

## Zoo Funding and Capital Improvements

- The Workgroup reviewed and discussed targeting Zoo receipts for under-funded needs (Capital)
- The Workgroup saw the NC Aquarium Fund as a model for directing:
  - Tax dollars towards operating requirements
  - Receipts towards capital needs

## Zoo Funding and Capital Improvements

The Workgroup proposes:

- 30% of receipts retained for operating (~\$2M)
- 70% of receipts transferred to the Zoo Special Fund (~\$4M)
- Zoo Special Fund would be used primarily for Capital needs
- Delay effective date, and **phase in transfer**

## Zoo Funding and Capital Improvements

The Workgroup proposes:

- At the appropriate time, issue \$30-\$40M in General Fund debt financing
- Use Special Zoo Fund receipts to reimburse General Fund debt service (\$3M-\$4M)
- Convert most of the Fund to a debt service fund
- Focus on North America and Africa

## Zoo Funding and Capital Improvements

Proceeds generated by the Special Zoo Fund would be combined with other sources to meet the Zoo's capital needs, including:

- Discrete General Fund appropriations
- Repair and Renovation Reserve Account Allocations
- NC Zoo Society contributions



## Further Direction to DENR

In the absence of a new governance structure, the Workgroup recommends the DENR be directed to do the following:

- Streamline contracting procedures and delegate where appropriate
- Assist the Zoo with meeting IT needs under SB 991
- Use administrative powers to address all other challenges
- Revisit the 15 year-old Memorandum of Understanding with the NC Zoo Society

## Future of the Zoo Study Committee

- Extend the Zoo Study Committee to May 2010 – the Short Session Start
- Direct DENR to report to the Committee in January 2010
  - Actions taken by DENR to meet Zoo needs
  - Status of statutory procurement powers
  - Status of the MOU with the NC Zoo Society
  - Capital & Debt Financing Plan for the Special Zoo Fund

## Summary of Proposal

- No change to the governance structure
- Authority for “Best Value” and “Government-Vendor Partnership” contracts
- Expand Umstead Act exemption
- Transfer 70% of annual receipts to Special Zoo Fund for capital

## Summary of Proposal

- Pursue \$30-\$40M in debt financed capital from the Special Zoo Fund
- DENR works to address procurement, IT, and other challenges
- Zoo Study Committee extended to receive and act on DENR Report in 2010.



Questions?



**N.C. Zoological Park Funding and Organization  
Study Committee  
November 21, 2008**



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